



**PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL**

**Case number PSCB 431-09/10**

**In the matter between**

**E R TITUS**

**Applicant**

**And**

**DEPARTMENT OF CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND  
TRADITIONAL AFFAIRS, NORTHERN CAPE**

**Respondent**

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**ARBITRATION AWARD**

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**DETAILS OF HEARING AND REPRESENTATION**

1. The arbitration in this matter was held in De Aar on 4 June 2010, with provision for written submissions by 9 June 2010.
2. The applicant was represented by Mr L Silo of NEHAWU and the respondent by Mr K Alamu. My thanks go to both representatives for their assistance.

## **BACKGROUND**

3. The applicant is a senior administration officer in the local government section of the respondent in De Aar. He applied for three days annual leave from 6 to 8 July 2009 but did not receive payment for such leave and his salary for those days was deducted as unpaid leave. The applicant lodged a grievance which did not resolve the dispute to his satisfaction and he then referred the present dispute to Council where it remained unresolved at conciliation and proceeded to arbitration.

## **ISSUE IN DISPUTE**

4. It is in dispute whether the respondent properly interpreted and/or applied the provisions of PSCBC Resolution 7 of 2000 ('the resolution') in declining to grant annual leave to the applicant for the period 6 to 8 July 2009.

## **SURVEY OF EVIDENCE AND ARGUMENT**

### **The case for the applicant**

5. **Mr E R Titus** is the applicant in this matter and he had worked for the respondent since 1999.
6. According to the applicant, he applied for part of his annual leave for the days 6 to 8 July 2009 in the same informal manner that he had previously successfully used in applying for leave. This he did by phoning and informing a colleague Mr Diamond. He said it was an accepted practice in the De Aar office of the respondent to phone a colleague or a supervisor who would give telephonic permission for leave and an official leave form would then be filled out later. This practice had been changed in 2010 but only in that staff members could no longer phone colleagues but only supervisors or the regional head of department in order to get leave.

7. In cross-examination, the applicant said he was aware of the official leave policy as contained in the departmental policy document. This policy prescribed that a leave form had to be submitted and approved before taking annual leave and that, if a staff member phoned in for sick leave, a sick leave form must be handed in later. He also said that, if a subordinate came to him after an absence from work and handed in a leave form, he would not approve it as it was against the policy. He said there was an informal agreement at the De Aar office to deal with leave informally, even if it did not comply with the official policy. And he said that, if he had applied in the wrong way, he should rather have been disciplined for being absent without leave; in any event, his superiors should have informed him that the way of applying for leave had been changed. If he had known that the rules had changed, he would have complied with the new ones. The applicant did not agree that he had been absent because there was nothing to do at work – though he had indeed made such a remark to Mr Jacobs.
8. **Mr T E X Diamond** is a staff member in the same section as the applicant.
9. According to Mr Diamond, a staff member could phone the respondent and fill in a leave form on his return; this applied also to annual leave and it had been a practice at the office for at least the last four years. He said that, on the day the applicant took leave, the applicant had phoned him to ask him to inform the supervisor that the applicant was not well. Mr Diamond then said he was not sure if the informal way of requesting leave applied to all kinds of leave but that is how he would do it if he was sick and he would then fill in a sick leave form with a medical certificate later.
10. **In argument**, the applicant stated that the respondent had incorrectly interpreted and/or applied the resolution in failing to grant him leave during July 2009 and requested repayment of the monies deducted.

### **The case for the respondent**

11. **Mr N W Jacobs** is an assistant manager in the corporate governance section of the respondent in De Aar.

12. Mr Jacobs set out the procedure for occasional and annual leave contained in the official policy on leave of absence which required a prior written application. He said that, in this instance, the applicant gave a reason for his absence on his return, which was that there was nothing to do in the office. The applicant thereafter submitted a normal leave application form; if he had been sick then he should have handed in a sick leave form.
13. Mr Jacobs agreed in cross-examination that annual leave can be used for any purpose. He did not agree that leave in De Aar could be obtained informally by just phoning the office, except in an emergency and for sick leave; annual leave is dealt with according to the official policy.
14. **In argument**, the respondent stated that it had correctly interpreted and/or applied the resolution in refusing to grant the applicant leave.

#### **ANALYSIS OF EVIDENCE AND ARGUMENT**

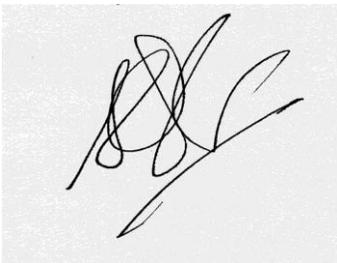
15. It is common cause that the departmental leave procedure is governed by the respondent's official leave of absence policy, in which the procedure itself is set out in paragraph 8 thereof. The resolution itself does not contain the procedure but states, in clause 7.1(e), that departments shall not unreasonably refuse to grant leave to employees who apply, taking into consideration service delivery requirements. The applicant relies on this clause to argue that, because he followed the informal practice in the De Aar office, it was unreasonable to refuse him leave for the relevant period. The respondent disagrees.
16. It is therefore necessary to see, firstly, whether there was such an informal practice in the De Aar office (although the applicant's representative claimed in argument that such a procedure was common cause, this is clearly not the case). Unfortunately for the applicant, the evidence in this regard is not clear. Mr Diamond reverted under cross-examination to claiming that the practice operated in the event of sick leave but he was uncertain about other kinds of leave; Mr Jacobs denied any such practice except in emergencies and sickness – and even the applicant himself was not convincing as to whether the informal application practice applied to every kind of leave.

17. The kind of informal application procedure claimed by the applicant is in essence nothing more than a notification of a colleague who may or may not inform the relevant superiors. Apart from the evidence above that does not convincingly establish the existence of such a procedure, it is simply common sense that informal prior application/notification can be made in emergencies and in the event of ill-health but that it would create havoc in departmental planning if this was applied in instances of annual leave.
18. Unfortunately for the applicant, again, it is not clear what kind of leave he applied for in this instance. Although the applicant and Mr Jacobs did not mention illness, the applicant's own witness Mr Diamond made it clear that the applicant was asking for sick leave. The evidence indicates that the applicant was absent for three days and on his return he commented that his absence was due to there being no work at the office. I find that the applicant's absence was probably for annual leave, as he alleges, and I agree that no particular good reason need be forwarded to take such leave.
19. It would probably have been appropriate in this instance to discipline the applicant for absence without leave. But that does not necessarily mean that the respondent was obliged to grant the applicant his annual leave in lieu of a disciplinary charge, particularly given the inconclusive evidence about any alleged informal procedure for annual leave applications.
20. Having regard to the evidence and documentation at arbitration, I find that the applicant has failed to prove that there was, at the relevant time, an established practice of applying for annual leave without following the formalities laid down in the departmental policy. I will accept that an informal procedure was - and is - followed in the event of sick leave or in an emergency but, despite Mr Diamond's intentions to assist the applicant, these exceptions do not appear to apply here.
21. I therefore conclude that the applicant was not following a proven informal procedure in the De Aar office in applying for annual leave by telephoning a colleague – a colleague who said this was for sick leave, anyway. The applicant in this instance, therefore, simply failed to apply for leave in the proper manner.

22. In these circumstances, it is difficult to find that it was unreasonable for the respondent to refuse the applicant's leave application for the period 6 to 8 July 2009.
23. I therefore find that the applicant has failed to establish that the respondent failed to interpret and/or apply the resolution correctly.

## **AWARD**

1. **The applicant has failed to prove that the respondent incorrectly interpreted and/or applied the provisions of PSCBC Resolution 7 of 2000 in refusing to grant the applicant leave for the period 6 to 8 July 2009.**
2. **The applicant is, accordingly, not entitled to any relief.**
3. **There is no order as to costs.**

A handwritten signature in black ink, appearing to be 'ANTONY OSLER', written in a cursive style on a light grey background.

**ANTONY OSLER**  
**Arbitrator**